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March 19, 2007

Andy Pollock
Executive Director
Nebraska Public Service Commission
1200 N Street, Suite 300, Lincoln, NE 68508

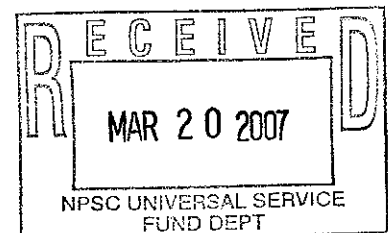
Re: Application No. NUSF-25 Progression Order No. 17 United
Telephone Company of the West d/b/a Embarq Comments in
Response to the issues set forth in the Commission's order.

Dear Mr. Pollock:

Please accept for filing an original and five copies of United Telephone
Company of the West d/b/a Embarq comments in this matter. If you have any
questions, please do not hesitate to contact me.

Sincerely,

William E. Hendricks, Esq.



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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for the purpose of certifying the use of federal universal service support.

Application No. NUSF-25
Progression Order No. 17

In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for the purpose of certifying the use of state universal service support.

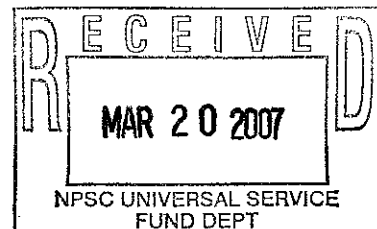
Application No. NUSF-66

COMMENTS OF UNITED TELEPHONE COMPANY OF
THE WEST d/b/a EMBARQ

United Telephone Company of the West d/b/a Embarq respectfully submits these comments in response to the issues set forth in the Commission's order in the above referenced dockets, entered on February 6, 2007.

I. INTRODUCTION AND BACKGROUND

The Commission seeks to establish guidelines for the submission of information by eligible telecommunications carriers ("ETCs"). Specifically, information it uses to provide certification to the Federal Communications Commission ("FCC") that federal high-cost support will be used for its intended purpose and to certify, for Commission purposes, that state high-cost support will be used for its intended purpose. Embarq appreciates the opportunity to comment on this issue.



For the federal universal service fund ("USF"), the Commission currently utilizes a self-certification process. Under this process, ETCs certify that federal high-cost support will be used for the maintenance, provision and upgrading of service through a notarized affidavit, filed with the Commission by September 1 of each year. The Commission then provides the required certification to the FCC, by October 1, for those carriers that are eligible to receive high-cost USF support in the coming year, based on the affidavits received. Similarly, ETCs receiving high-cost support from the Nebraska universal service fund ("NUSF") must file an affidavit with the Commission by October 31 certifying that NUSF high-cost support for the previous year was used solely for the provision, maintenance and upgrading of facilities and/or service for which the support was intended.

In March 2005, the FCC released its *ETC Designation Order*,¹ which sets forth the requirements for the designation of new ETCs. The *ETC Designation Order* sets forth the annual certification and reporting requirements for all ETCs in states over which it has jurisdiction. The FCC encouraged state commissions to adopt its designation and annual certification reporting requirements.

In April 2006, the Commission enacted rules regarding the information required for the application and annual qualification of ETCs in Nebraska. The Commission's rules are largely based on the requirements the FCC enacted in the *ETC Designation*

¹ *Federal-State Joint Board on Universal Service, Report and Order*, CC Docket No. 96-45, FCC 05-46, 20 FCC Rcd 6371 (2005)

Order. The annual qualification reporting requirements for ETCs in Nebraska (due either on April 1 or October 1, as elected by the ETC) include:

009.04A1 A progress report on its five-year service quality improvement plan, including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. The information shall be submitted at the wire center level.²

II. THE COMMISSION'S PROPOSAL IN THIS DOCKET: EMBARQ BELIEVES THAT THE COMMISSION ALREADY RECEIVES SUFFICIENT INFORMATION TO MEET ITS CERTIFICATION REQUIREMENTS

The Commission has proposed to require each ETC provide one year of historical and one year of prospective data, including any expenses, showing investment in the maintenance and upgrading of supported facilities or services. The report would be due by July 1 of each year. Wireline ETCs would provide the information at the exchange level or by in-town versus out-of-town where available. Wireless ETCs would provide the information by wire center or by city and county, whichever is more readily available. It is unclear from the Commission's request for comments whether this investment and expense information would be provided in addition to, or in lieu of, the self certification affidavits currently due on September 1 and October 31.

Embarq submits that the Commission already receives all the information it needs from ETCs to verify and certify that both the federal and state high-cost funds are

² Nebraska Admin Code, Title 291, Chapter 5, Section 009.

being used for the maintenance, provision, and upgrading of service. ETCs already are required to provide information regarding progress towards their five year service quality improvement program (at the wire center level) as part of the annual ETC qualification filing. Therefore, it would be duplicative to require ETCs to provide a second filing with one year of historical and one year of prospective investment at the exchange level (or in-town versus out-of-town, if available). The investment and expense data that ETCs would provide in these two filings would be similar, if not identical. In addition, both filings would have similar objectives: ensuring that state and federal high-cost support is being used for the maintenance, provision, and upgrading of service in the state of Nebraska. Whatever the reporting requirements the Commission decides are appropriate, Embarq urges it to apply them in a manner that is technologically and competitively neutral manner. Thus, regardless of the technology ETCs use, all ETCs should be required to submit the same information to the Commission.

Some states use the annual qualification of ETC filings as the basis for certification to the FCC that federal high cost support is being used for the maintenance, provision, and upgrading of service.³ In addition, it was the FCC's intention that the annual qualification of ETC filings be used for the certification of the ETC as eligible to receive federal USF in the coming year. In its *ETC Designation Order*, the FCC stated:

³ In Embarq's 18 state service territory, Indiana, Kansas, Minnesota and Wyoming use the annual ETC qualification report as the basis for certification to the FCC that the high-cost funds are being used for the intended purpose.

[I]n order to continue to receive universal service support each year, we require each ETC over which we have jurisdiction, including an ETC designated by the Commission prior to this Report and Order, to submit annually certain information regarding its network and its use of universal service funds. These reporting requirements will ensure that ETCs continue to comply with the conditions of the ETC designation and that universal service funds are used for their intended purposes" (emphasis supplied).⁴

Embarq believes that it is unnecessary for the Commission to adopt requirements that go beyond what the FCC's has mandated for certification.

In addition, it is difficult to "assign" investments to an exchange or wire center based on arbitrary criteria. Investments can and do benefit customers in multiple exchanges and it can be difficult to allocate the investment among all of the exchanges. The same situation holds true for investments that could be "assigned" to in-town or out-of-town areas of exchanges. For instance, upgrading fiber transport facilities between two exchanges will benefit customers in both exchanges. However, determining the amount of the investment that is attributable to each exchange is not an easy task. Similarly, information on expenses by exchange would be meaningless because expenses incurred in one exchange can and do benefit customers in other exchanges.

The Commission is also proposing that ETCs provide information about expenses for the maintenance and upgrading of facilities. Expenses of this nature are valid expenditures for the maintenance, provision, and upgrading of service for which

⁴ ETC Designation Order, at ¶ 68 (citations omitted).

USF support is intended. However, like investment information, the Commission is proposing that ETCs provide this expense information at the exchange level or by in-town versus out-of-town, where available. Embarq's systems do not maintain expense information at the exchange or wire center level, let alone disaggregated even further to the in-town versus out-of town level. Embarq is only able to provide statewide expenses associated with the maintenance, provision and upgrading of facilities and service.


Embarq is also concerned about the absence in the Commission's proposal of a definable standard of review for the certifications. According the Commission's proposal, as part of the proposed process for verification of the use of federal and state high-cost support "[t]he Commission staff will review the historic and prospective investment data filed and make a determination as to whether it has any reasonable concerns with the investment information filed."⁵ However, the proposal provides no information regarding what the "review" will involve or what would constitute a "reasonable concern" by Commission staff. Embarq urges the Commission not to adopt standards that are subjective and could potentially result in differential treatment of ETCs. Because the proposed standard appears to be subjective, Embarq suggests that Commission staff compare total expenditures for the maintenance, provision, and upgrade of service to the federal USF and NUSF support received. If the expenditures

⁵ NUSF-25/NUSF-66 Order Opening Docket and Seeking Comment, paragraph 5.

exceed support received, the Commission would be assured that the support was used for its intended purpose.

III. CONCLUSION

Embarq believes the certification requirements that the FCC adopted in the *ETC Designation Order* are more than sufficient to ensure that ETCs in Nebraska are using support for its intended purpose. However, should the Commission nevertheless decide to adopt additional certification requirements, it should not require reporting investment and expense information on a wire center/exchange or in-town/out-of-town basis. Last, should it choose to implement its proposal, Embarq urges the Commission to adopt an objective, predictable standard by which to measure ETC certifications. In this regard, Embarq recommends that the Commission compare total expenditures for the maintenance, provision, and upgrade of service to the federal USF and NUSF support received.

By: 
William E. Hendricks

Attorney for United Telephone Company
of the West, d/b/a Embarq